

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 198 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF INCOME-TAX

Versus

GUJARAT STATE FERTILIZERS CO LTD

Appearance:

MR MIHIR JOSHI for MR MANISH R BHATT for Petitioner
MR MANISH J. SHAH for MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 12/11/98

ORAL JUDGEMENT (per R. Balia, J.)

At the instance of C.I.T. Gujarat, the following three questions of law have been referred for the opinion of this court by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' arising out of its appellate order in ITA No. 2035/Ahd/80 and Cross-Objection No. 66/Ahd/81

relating to Assessment Year 1976-77.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the expenditure of Rs. 22,954/- incurred by the assessee in connection with the issue of bonus shares was allowable as a revenue expenditure?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to claim further expenditure amounting to Rs. 23,946/- under sec. 37(2)(b) of the Income-tax Act, 1961?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to claim depreciation on roads, culverts, drainage, etc. as plant (except those in residential locality) and not as buildings?"

2. The first question referred above relates to claim of the assessee to deduct amount spent in connection with issue of bonus shares as revenue expenditure. Learned Counsel for the assessee states that in view of decision of this court in Gujarat Steel Tubes Ltd. v. Commissioner of income-tax reported in 210 ITR 358, the question has to be answered in favour of the Revenue and against the assessee as the same has been held to be capital expenditure. Accordingly, we answer the first question referred to above in negative, that is to say, in favour of the Revenue and against the assessee by holding that the expenditure incurred in connection with the issue of bonus shares was not allowable as the same was capital in nature.

3. About the second question also Learned Counsel for the assessee states that this question relates to messing and entertainment expenditure incurred by the assessee during the previous year relevant to the assessment year in question. After explanation to sec. 37(2)(b) was inserted with effect from 1.4.76 and in view of the decision of the Supreme Court in CIT v. Patel Brothers and Co. Ltd. and ors reported in 215 ITR 165, the claim cannot be allowed ipso facto but an inquiry will have to be made by the Tribunal to find the liability and the expenditure incurred to the extent it was incurred on the employees. We accordingly answer this question referred to above.

4. The third question referred to above is squarely covered by the decision of this court in assessee's own case for the other assessment years in respect of the very same assets. In ITA No. 9184 and 9185/Ahd/75-76 for Ays 1968-69 and 1969-70, the Tribunal had held that roads, culverts and drainage (except those in the residential localities) should be treated as plant and not as buildings for the purpose of depreciation. In the assessee's own case for Assessment Year 1978-79 this question was referred for the opinion of this court in ITR No. 175/83 which was decided and reported in (1996) 216 ITR 550. This court came to the conclusion that roads, culverts and compound walls are an integral part of factory premises and are to be treated as building for the purposes of depreciation and not as plant. Regarding drainage, the court was of the opinion that as discharge of effluent is an integral part of operation of the plant, the pumps and drainage pipes are necessary adjuncts of the plant itself and therefore "plant" within the meaning of sec. 33 of the Act.

5. We accordingly answer question No.3 partly in favour of the assessee by holding that drainage is a part of plant but roads and culverts, for the purpose of depreciation, can be considered only as buildings and cannot form part of the plant.

6. The reference accordingly stands disposed of.
There shall be no order as to costs.

(hn)